

The Odisha Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 308 CUTTACK, SATURDAY, FEBRUARY 1, 2025/MAGHA 12, 1946

LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 24th January 2025

S.R.O. No. 120/2025—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award dated the 30th December 2024 passed in ID Case No. 28 of 2012 by the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the management of M/s Hindalco Industries Ltd., P.O. Hiralakud-768016, Dist. Sambalpur and its workmen, represented through General Secretary, Hindalco Staff Association, At/P.O. Hiralakud-768016, Dist. Sambalpur was referred for adjudication is hereby published in the schedule below:—

SCHEDULE

BEFORE THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 28 of 2012

Dated the 30th December 2024

Present :

Shri Benudhar Patra, LL.M.,
Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

Between :

The Management of
M/s Hindalco Industries Ltd.,
P.O. Hiralakud-768 016,
Dist. Sambalpur.

.. First Party—Management

And

Its workmen, represented through
General Secretary, Hindalco Staff
Association,
At/P.O. Hiralakud-768 016,
Dist. Sambalpur.

.. Second Party—Workmen

Appearances :

Shri N.K. Mishra, Sr. Adv. & Associates	. . For the First Party—Management
Shri Sushanta Dash, Advocate	. . For the Second Party—Workmen

AWARD

The Labour & E.S.I. Department of Government of Odisha, having satisfied that there exists an industrial dispute between the above named parties, have referred the following schedule of dispute for adjudication by this Tribunal vide Order No. IR-ID-89/11/3697/LESI, dated the 10th May, 2012 :—

SCHEDULE

“Whether the demand of the Hindalco Staff Association for the monthly incentive bonus and the annual productivity bonus @ 30% of annual gross earning as annual productivity bonus is legal and/or justified ? If so, what should be the details.”

2. Pursuant to the above reference, on the second party's filing claim statement, the management filed its written statement to which the second party also filed a rejoinder. Before narrating the claim as put forth by the second party in its claim statement as well as rejoinder and the counter reply of the management in its written statement, a little background facts leading to culmination of the present reference need mention. The General Secretary, Hindalco Staff Association, Hirkud submitted a 41 point charter of demands to the management with an ultimatum to the effect that in case of non-fulfilment of such demands the union would go on a strike w.e.f. the 6th April 2010 with information to the labour machinery and on receipt thereof initiatives were taken by the labour machinery by asking both parties to attend a joint enquiry on the 31st March 2010 and in pursuance thereof as the management sought for time seeking guidelines from the Corporate Office, the union agreeing with the view postponed their strike from the 6th April 2010. Thereafter the move of the union for strike having been challenged by the management before the Hon'ble Court in W.P.(C) No. 6352 of 2010, the Hon'ble Court passed an interim order dated the 5th April 2010 restraining the Union to resort to strike w.e.f. the 6th April 2010 until further orders and later on the said W.P.(C) having been dismissed by the Hon'ble Court with a direction to the labour machinery to take necessary action on the charter of demands of the union, on being noticed, the management replied that as against the orders it has filed a review petition before the Hon'ble Court. But later on the Review Petition was also dismissed. The management thereafter despite notice, did not attend the conciliation but submitted its written views to the effect that the members of the union being not 'workmen' within the meaning of Section 2(s) of the Industrial Disputes Act, the same may be determined first before entering into any discussion on the other issues as contained in the charter of demands. The union, thereafter took an initiative to admit the revised 23 point charter of demands submitted on its behalf on the 14th March 2011 and accordingly Form-D was issued for conciliation on the 23 point charter of demands of the union. The management remained firm in its views and did not show any interest for negotiation on the 23 point charter of demands on the pretext that the disputants are not 'workmen', hence conciliation of the disputes having been failed, the reference as in the schedule surfaced for adjudication by this Tribunal.

3. In the above premises, the second party filed its claim statement stating, *inter alia*, that the first party management M/s Hindalco Industries Ltd., Hirkud (for short 'HINDALCO') is a

company registered under the Indian Companies Act, 1956 and was incorporated in the year 1958 having worldwide operations in 13 countries with a workforce of 34,000 employees working in its 51 units. The Hiralud works of the said company was formerly known as Indian Aluminium Co. Ltd. (for short 'INDAL'). It is stated that in so far the Standing Orders of INDAL, Hiralud Power, Hiralud is concerned, the same applies to workmen covered under the Wage Roll as well Salary Roll of the Smelter Plant and so also to the members of the disputant union who are working in the Captive Power Plant. It is pleaded that in order to safeguard the interest of the workers engaged in Hiralud Works of the company and to have better bargaining power on behalf of the workers, in the year 1961, a registered Trade Union, namely, "Indal Employees' Union" was formed; registered under the Trade Unions Act, 1926 and declared as a recognised union. It is stated that the management used to enter into different Long Term Settlements (for short 'LTS') with the recognised unions including the present disputant-union with regard to various service conditions /benefits in addition to the terms as enumerated in the Certified Standing Orders of the Company in relation to the Captive Power Plant. Specifically, it is asserted that the members of the disputant union, such as Junior Assistants, Assistants, Senior Assistants, Asst. Foremen, Foremen, Senior Foremen, Junior Supervisor, Supervisor, Senior Supervisor, ASG, DSI, SG, Pharmacist, Nursing Technicians were members of the existing registered unions and were enjoying the benefits in terms of the LTS with the management till 1996, which was in operation till 1999 in so far as Smelter Plant is concerned and LTS of 1996 for Captive Power Plant which was in operation till 2001 and while the matter stood thus, in the year 1997-98 the management with an ill intention and in order to curb the union activities and so also to debar a majority group of workmen/employees from the purview of the benefits under the LTS, categorised the Group of workmen as "Management Staff Category" and accordingly issued individual letters to those group of workmen/employees indicating therein that though there will be no change in their designation, they will no longer be governed by the LTS and under coercion and pressure got their declaration in printed papers to the effect that they would abide by the said terms and conditions as appended to the said letter. According to the second party, such conduct of the management amounts to "unfair labour practice" as defined under Section 2(ra) read with various terms of the Fifth Schedule of the Act and is also illegal owing to the fact that the benefits under the LTS which the workmen were enjoying since inception of the plant till 1997 were changed without complying with the provisions of Section 9-A of the Act and the same amounts to "change of service conditions". Consequently, it is pleaded, the management did not recognise the services offered by the workmen in Grade 25 to 30, though the said group of workmen used to carry out their job responsibilities effectively and started torturing them by asking them to work beyond official duty hours without payment of any extra remuneration for such duty. As a result of the above, the workmen in Grade-25 to 30 formed a Trade Union on the 13th September 2009, namely, 'Hindalco Staff Association' (i.e. the present disputant Union) and on proper application the union was registered under the Trade Unions Act, 1926 and assigned with the Registration No. 286-SBP, dated the 18th February 2010 and before issuance of such Registration Certificate in favour of the disputant union a discreet enquiry having been made by the Labour Authority a report was submitted to the concerned authority to the effect that the Junior Assistants, Assistants, Senior Assistants, Asst. Foremen, Foremen, Senior Foremen, Junior Supervisor, Supervisor, Senior Supervisor, Assistant Security Guard, Deputy Security Inspector, Security Guard, Pharmacist, Nursing Technicians of M/s Hindalco working in Smelter Plant and Power Plant having no executive functions are workmen and members of the said union, Thereafter on the 11th March 2010 the second party union submitted

a 41 point charter of demands along with a strike notice with a copy to the labour machinery intimating that unless the demands were fulfilled by the management the second party members would resort to a strike w.e.f. the 6th April 2010, whereupon on notices being issued to both the parties by the DLO, Sambalpur to appear for a joint enquiry on the 31st March 2010, the representative of the management appeared and sought for an adjournment, accordingly the union postponed the proposed strike and the joint enquiry was posted to the 16th April 2010. It is stated, the management in the meantime without looking to the genuine demands, approached the Hon'ble Court in W.P.(C) No. 6352 of 2010 challenging the statutory notice of the DLO, Sambalpur for joint discussion and for cancelling the Certificate of Registration issued in favour of the second party union and could be able to obtain an *ex parte* interim order restraining the members of the union from resorting to strike w.e.f. the 6th April 2010 until further orders. The said writ petition was ultimately dismissed by the Hon'ble Court on the 9th December 2010 with an observation that the disputant union has got membership not only from the Supervisory staff but also from other categories such as Junior Assistants, Assistants, Senior Assistants, Asst. Foremen, Foremen, Senior Foremen, Junior Supervisor, Supervisor, Senior Supervisor, Assistant Security Guard, Deputy Security Inspector, Security Guard, Pharmacist, Nursing Technicians with a direction to the Labour Commissioner, Odisha, Bhubaneswar to proceed further in the matter of grant of recognition to the 7 office bearers of the disputant union as "Protected workmen". One review application bearing No.12 of 2011 was preferred by the management as against the judgment passed in W.P. (C) No. 6352 of 2010, but the same was also dismissed vide order dated the 4th February 2011 of the Hon'ble Court. Thereafter the second party insisted upon conciliation on its revised 23 point charter of demands dated the 14th March 2011, but the management remained firm in its views and contended that since the members of the second party union are not 'workmen' within the meaning of Section 2(s) of the Act, the 23 point charter of demands cannot be conciliated upon by the labour machinery and accordingly conciliation of the disputes was ended in failure and consequently the disputes were referred to this Tribunal for adjudication.'

The categorical assertion of the second party union with regard to the status of its members is that as per the settled position of law, nature of job is the decisive factor whether to bring or not to bring an employee under the definition of 'workmen' as defined under Section 2(s) of the Act. It is the consistent stand of the second party union that all its members have been discharging manual and/or clerical nature of jobs. The second party union admitted that even if the Grade 25 to 30 employees were styled as Local Management Staff in the year 1997-98, yet there was no change in their nature of job, so also the designation as prevalent then and further as per the amended provision of Section 2(s) of the Industrial Disputes Amendment Act, 2010, the wage ceiling as prescribed under Section 2(s) has been enhanced to Rs.10,000 from Rs.1,600 and at the time of formation of the present union there were 358 employees who were members of the said union and out of the same 269 employees were drawing salary below Rs.10,000 on the said date. From the month of July, 2010 without any notice, and without any adherence to legal provisions enshrined under Section 9-A of the Act the management introduced "Job Band Grade" 14 to 12 in place of Grade 25 to 30 employees, who are all members of the present disputant union and in this regard an industrial dispute at the instance of the present disputant union is pending conciliation before the DLO, Sambalpur. It is stated that in earlier days, the induction grade was Grade 3 in Smelter Plant and after the last LTS dated the 22nd July 2009 the said induction grade has been

upgraded to Grade 6 and further the grades of the operatives have been substantially upgraded as per Clause 8 of the said Tripartite Settlement, inasmuch as, the Junior Operator/Tool Boy who is/was working in Grade 6 is to be upgraded to Grade 10 and likewise as detailed in the said clause of the LTS. It is stated that there has been a drastic revision of grades of the operatives in view of change of technology and enhancement of the capacity from 30 KTPA to 161.4 KTPA in Smelter Plant and from 67.5 M.W. to 367.5 M.W. in Power Plant, but the employees in Grade 25 to 30 have remained as it is as the management has neither compensated nor provided any benefit after change of the technology though they were enjoying such benefits under various agreements till 1997. The categorical assertion of the second party union with regard to their claim under the schedule of reference is that the Monthly Incentive Bonus and Annual Productivity Bonus were being paid to all the operatives of the first party basing on the aluminium production during the month as well as during the year, respectively in the Smelter Plant and to the Operatives of the Captive Power Plant as per the terms of the LTS. It is stated that though the staff in Grade 25 to 30 were enjoying the said benefits till 1997-98, the first party has withdrawn the same knowing fully well that staff belonging to Grade 25 to 30 were/are directly connected with the whole production process and further the long-term settlements were in operation till 1999 and 2001 for Smelter and Captive Power Plant, respectively. Giving a comparison chart along with the claim statement showing the average approximate annual bonus in respect of contractor employee, wage roll employee, staff roll employee and HO Roll employee, the second party union has demanded annual productivity bonus @ 30% of the annual gross earning as well as for payment of monthly incentive bonus at the same rate like that of the operatives including arrears since 1997-98 as per the terms of the various LTS operating then and subsequent settlements entered into between the management and the unions functioning in the Smelter Plant as well as in the Captive Power Plant.

4. The first party contesting the 'lis' filed its written statement. At the outset, it has challenged the maintainability of the reference on the ground that the office bearers and members of the second party union do not come within the scope and ambit of 'workman' as defined under Section 2(s) of the Act, inasmuch as, not only by the terms and conditions of their appointment but the nature of job performed by each of them is supervisory in nature and each of them is drawing wages more than Rs.10,000 per month. It is stated that the supervisory cadre of employees like the members of the second party enjoy uniform service conditions throughout the country in all the similar units like that of the unit of Hindalco at Hirakud and the services of such type of employees are transferrable to any of the units throughout the country as per the contract of service conditions and on the face of the above the demand made by the second party union in isolation of other units being contrary to the contract cannot be entertained; the same being incompetent to be adjudicated upon.

It is stated that the non-workmen supervisory staff are not governed by the Standing Orders, namely the Standing Orders of Wage Roll employees, Standing order for salary roll employees and the Standing Orders of M/s Indian Alumina Company Limited, Hirakud. Stating that the Grade 25 to 30 are no more in existence in its organisation, it is explained by the first party that the employees in Grade 25 to 30 having voluntarily opted to come over to the category of Local Management Staff (LMS) and subsequently accepted and acknowledged the terms and conditions out of their free will and volition, it is not correct to say that the classification of workmen are same as has been classified in the Certified Standing Orders meant for Wage Roll as well as Salary

Roll employees of Smelter Plant and the same is made applicable to the members of the second party union. Referring to the word “staff member” as defined under Clause 3(b) of the Standing Orders for Salary Roll employees and sub-section (i) of Section 2 of the Industrial Employment (Standing Orders) Act, 1946, it is asserted that the Standing Orders by no stretch of imagination can be said to be applicable to the second party members. It is the categorical stand of the first party that the members of the second party were never part of the LTS of Hirakud Unit and never enjoyed the benefits under the LTS prior to 1997 and it is not at all correct to say that the management with an ill intention and in order to weaken the union activities, so also to debar a majority group of workmen from the purview of benefits under the LTS had adopted such a tactics and got their declaration signed under coercion and pressure, accordingly the unfair labour practice as referred to by the second party union is stated to be a motivated stand. It is also pleaded that the DLO in his verification report has clearly mentioned that the office bearers and the members of the second party union are supervisory staff and they are not the members of any other existing registered Trade Unions and so observing certified that they could apply for registration of the Association under the provisions of the Trade Unions Act. It is specifically averred that the members of the second party are employees under the job band 14, 13 and 12 and are guided by separate rules and terms and conditions of their appointment since 1997. It is stated that in the present structure of employees there is no such Grades 25 to 30 in existence and all the Grades 25 to 30 have been merged in job band 14, 13 and 12 since 2010 and consequently their designations have been renamed as Jr. Engineer, Jr. Officer, Asst. Engineer, Asst. Officer, Dy. Engineer, Dy. Officer in place of Jr. Supervisor, Supervisor, Jr. Assistant, Sr. Assistant and Sr. Supervisor, respectively. That apart, it is pleaded, the comparison between operators and supervisory personnel is not acceptable, as because the operators are doing manual labour in much hard environment than an employee under job band 14 to 12. Further assertion of the first party is that the category of employees' increments is based on the cost to company basis (CTC) and the total percentage of increase is distributed amongst various components of CTC in such a manner that 45% of the increment is towards basic salary and the rest of the increments is towards other allowances and reimbursements (without housing). This policy governs both the supervisory as well as to the managerial cadre of employees uniformly in all the Units of the company in India. The company determines salary of each employee on the basis of cost to company. Giving a comparison table in this regard, it is asserted that the gross salary of the employees has considerably increased during the period from August, 1997 to June, 2012, whereas almost during the same period the Variable Dearness Allowance (VDA) has gone up a rise to the extent of 391 %. It has further been pleaded that NALCO being a public sector undertaking following the Central Government Rules, there can be no comparison of the wage structure of the first party with that of the said Company. Besides, NALCO has a production capacity of 460 KTPA, which is almost three times more than that of the first party unit at Hirakud which is having the installed capacity of 156 KTPA. So, the averments of the second party claiming pay parity with NALCO is not correct. As regards the profit of the first party, it is stated that profitability of the particular unit is taken into account while computing the increments and other benefits pertaining to that particular unit, margins in the profitability, i.e. operating margin and net margin and the net margin of the company has reduced from year to year due to higher cost of inputs, power, labour etc., Challenging the merit of the claim as contained in the schedule, it is stated by the first party that the unionized operatives/workers get annual productivity bonus as well as monthly incentive bonus as per the terms of the LTS, as applicable to them, whereas the disputants having come over to the Management Staff

Category are governed by the terms and conditions attached to their appointment orders and therefore, they being no more in the category of 'workmen' the benefits under LTS are not applicable.

5. Consequent upon filing of the written statement, the second party union has filed a rejoinder almost reiterating its stand taken in the claim statement and further disputing the averment of the first party that the members of the disputant union enjoy uniform service condition throughout the country in all similar units like that of the unit at Hirakud. It is stated that the first party management has another Smelter Plant at Renukoot and Captive Power Plant at Renusagar in the State of Uttar Pradesh and the workmen/employees of similar grades are being treated differently with better pay and perks. The averment of the first party that there is no transfer of employees of Grade 25 to 30 is simply an eye wash to mislead the Tribunal. As regards the averment of the first party that Grade 25 to 30 are not in existence because of the second party members' opting for induction into the LMS category out of their own volition, it is stated that when the first party tried to change the grade, designation etc. of the second party members the disputant union and its members strongly objected to the same, as a result such grades as well as their designations remained intact as before and the same are being reflected correctly in their monthly pay/salary slips and as such it is false to assert that such a step was voluntary one on the part of the second party members. It is also the specific stand of the second party union that its members are still governed under the various Standing Orders of the Company, inasmuch as, the General Secretary of the second party union has recently been charge sheeted under the INDAL Standing Orders. The second party union feigned its knowledge regarding the so called Job Band 14 to 12, as pleaded by the first party. Further, it is in the rejoinder that the issue regarding 'protected workmen' no more survives for consideration as the same has already been decided by the Labour Commissioner by virtue of orders of the Hon'ble High Court and the same having not been challenged by the first party has attained its finality. The second party denies the averment of the first party with regard to its plea that increment of these categories of employees is based on cost to company basis (CTC). Disputing the comparison, it is stated that the comparison ought to have been made between the second party members in one hand and the employees covered under the LTS on the other. Specifically it is averred in the rejoinder that the members of the second party union, i.e. Grade 25 to 30 employees having never intended to relinquish the pattern of service benefits attached to the workmen category of employees covered under the LTS, rather they were forced to adopt the categorisation made by the first party, the demands of the second party union, as contained in the reference, besides being legal is justified.

6. Upon consideration of the pleadings of the parties, the Tribunal has framed the following issues for determination :—

ISSUES

- (i) Whether the members of the second party Association are "workmen" as defined under Section 2(s) of the I.D.Act ?
- (ii) Whether the demand of the Hindalco Staff Association for the monthly incentive bonus and the annual productivity bonus@ 30% of annual gross earning as annual productivity bonus is legal and/or justified ? If so, what should be the details ?"

7. The second party union, in order to substantiate its stand has examined five witnesses, namely (1) Shri Ajit Kumar Singh, (2) Shri Mrutyunjaya Pattanik, (3) Shri Ajay Prasad Mohanty,

(4) Shri Anil Baran Patel and (5) Shri Prafulla Kumar Nayak and in addition thereto it relied on documents, which have been marked as Exts.1 to 49. The first party management, on the other hand, examined four witnesses, namely (1) Jyoti Narayan Mishra, (2) Nagesh Chandra Pal, (3) Ravi Kumar Pandey and (4) Satyaprasad Das as M.W.No. 1 to M.W.No. 4 and placed reliance on Ext. A to Ext. BF.

FINDINGS

8. *Issue No. (i)*—The moot question for determination under this issue is as to whether the members of the second party are ‘workmen’ within the meaning of Section 2(s) of the Act.

Before entering into any discussion on the issues, the factual backdrop of the dispute, as it emerges from the pleadings as well as admitted by the parties, needs little reference. In the context, it may be taken note of that the disputants involved in the ‘lis’ were initially under the employment of M/s Indian Aluminium Company Limited (INDAL) and were enjoying all the benefits meant for industrial workers, inasmuch as, they were guided under the Certified Standing Orders as well as covered under the Long-Term Settlements (LTS) entered into between the management and the unions. During the year 1997-98 the management of INDAL formed a new cadre of employees as ‘Management Staff Category’, otherwise known as ‘Local Management Staff’ (LMS) with certain benefits at par with the Higher Management Staff and as a consequence thereof the disputants concerned in the reference were all brought to the said cadre where they continued with the benefits attached to the said cadre till the first party took over the management of M/s INDAL in the year 2005 and also thereafter till formation of the second party union, i.e. in the year 2009-10. It is also not in dispute that after formation of the union the disputants being unionised made various demands on the ground that despite their rendering clerical/manual nature of duties they have been deprived of the benefits of LTS and there being no voluntariness on their part to come over the Management Staff Category, the step taken in that regard is nothing but an unfair labour practice, which ultimately culminated into the present reference.

9. With the above background, it has been argued by the Learned Senior Counsel for the management that there being sufficient evidence on record that the members of the second party consequent upon their upgradation to the Management Staff Category are discharging supervisory nature of duties with higher responsibilities they cannot be brought within the meaning of ‘workmen’ as defined under Section 2(s) of the Act. In this connection, he referred to the cross-examination part of WW Nos.1, 2 and 3 as well as the evidence in chief and cross-examination of MW Nos.1, 2 and 3 and submitted that the same would go to show the nature and character of the duties as well as responsibilities discharged by the members of the second party and on that basis the conclusion is inevitable that they are not covered within the definition of ‘workmen’.

On the other hand, it is submitted by the learned counsel for the second party union that there being sufficient evidence on record that the members of the second party were/are discharging manual/clerical nature of duties and at no point of time they were/are ever required to perform managerial nature of duties the challenge on this score is not tenable. Contending that designation and remuneration are not at all decisive factors to arrive at a conclusion on the status of an employee, learned counsel cited the decisions of the Hon’ble Apex Court in the cases of National Engineering Industries Ltd. Vrs. Shri Kishan Bhageria and others (AIR 1988 SC 329); Ananda Bazar Patrika (P) Ltd. Vs. Workmen[(1970) 3 SCC 248]; Sharad Kumar Vs. Govt. of NCT of Delhi and others (AIR 2002-SC 1724); Arkal Govind Raj Rao Vs. Ciba Geigy of India Ltd.,

Bombay (AIR 1985 SC 985); Bombay Dyeing and Manufacturing Company Limited Vs. R.A. Bidoo and another (1990 Lab.I.C.116) as well as the decision of Hon'ble High Court of Orissa in the case of Hotel Hans Coco Palms Vs. Milan Das (MANU/OR/0243/2012) and that of the Hon'ble Delhi High Court in the case of Shri Muralidharan K. Vs. The management of Circle Freight[(2007) III LLJ 953 (Delhi)].

10. The rival stand of the parties on this issue needs a careful examination.

As it reveals from record, from the very inception of the dispute at the instance of the second party union, the first party has been taking a stand that owing to the second party member's coming to the Management Staff Category since long, i.e. during the year 1997-98 when it was M/s Indal Management, they are no more within the coverage of 'workmen' as defined under Section 2(s) of the Act. It is contended on behalf of the first party that the members of the second party after being categorised as LMS are discharging supervisory nature of job having managerial power and thus they are ousted from the definition of 'workmen'.

11. Before proceeding to analyse the evidence on record to determine the issue, it is felt expedient to go through the statutory definition of 'workman' as assigned in the Act and so also to keep in mind the consensus view/guiding principles propounded by the Hon'ble Apex Court as well as different Hon'ble High Courts, as referred to by the learned counsel for the second party.

A bird's eye view in this regard may be made to the definition of 'workman' as given in the Act, which reads as follows :—

“workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, sales promotion, operational, clerical or supervisory or any work for promotion of sales for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
- (ii) who is employed in the police service or as an officer or other employee of a prison; or
- (iii) who is employed mainly in a managerial or administrative capacity; or
- (iv) who, being employed in a supervisory capacity, draws wages exceeding ten thousand rupees per mensem or exercise, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.”

On perusal of the judgements cited by the Learned Counsel for the second party union, it is found that the statutory definition of 'workman', as referred to above, has been interpreted by the Hon'ble Apex Court as well as Hon'ble High Courts at different times and it has been held that in order to bring a person within the fold of 'workman', the determinative factor is to see the main duties of the person and not some works incidentally done, and not the designation assigned to the person or remuneration attached to such designation. Further, it has been held by our own

Hon'ble High Court in the case of Hotel Hans Coco Palm (*supra*) that once the relationship of employer and employee is admitted by the employer and the employer submits that the employee is working in a supervisory capacity and thus is excluded from the definition of 'workman' as provided under Section 2(s) of the Act, then the onus is on the management to prove that the employee was in fact not discharging the manual duty. In view of the above, therefore, the Tribunal is required to assess the evidence on record to find out the nature of duties which the second party members are discharging so as to arrive at a conclusion on this point and in the case in hand there being no dispute over the fact that the second party members were all initially covered under the definition of 'workmen' but on their coming over to the Management Staff Category they are no longer continued to be members of the Trade Unions representing the Wage Roll/Salary Roll employees, the burden shifts on the first party to establish such aspect.

12. To strengthen its stand on the status of the second party members, the first party relied on the evidence adduced on this point by both the parties. On scrutiny of the evidence adduced from the side of the first party, it transpires that out of the management witnesses examined on this issue while MW 1 and MW 3, having joined the first party as LMS, are now continuing under the HO Rolls, the other witness MW No. 2 is an LMS employee. Although in their testimony MW Nos. 1 to 3 seem to have distinguished their nature of work as LMS from that of the Wage Roll/Salary Roll employees, who borne in the 'workmen' category and covered under the LTS, yet during his cross-examination MW 1 has stated to the following effect :

"No supportive document has been filed before the Tribunal on the managerial power of LMS employees. The handling of work like leave pay, allowances, statutory compliance etc. of Wage Roll employees is completely a manual work. The benefits such as Safety Shoes, Community Centre fees, Death Relief Fund, Welfare Fund and Quarter rent which are meant for Wage Roll employees, the same are also available to the LMS. It is not a fact that the above benefits are not the same to both the categories of employee, i.e. LMS and Wage Roll employees. No document has been filed before this Tribunal to substantiate the above benefits, but I can produce it. It is a fact that in support of supervisory/administrative capacity of the second party union members no document has been furnished. I can produce documents to that effect if so directed. It is a fact that in so far as production processes are concerned, the members of the second party union had no independent decision making authority and in so far as HR related issues are concerned, the disputants had to take decision according to their assigned responsibilities. It is a fact that I have not furnished any document in support of the fact that I have exercised the supervisory/administrative authority while I was in LMS category. Ext. 43, Ext. 44 and Ext. 45 are the Form-16 for the year 2012-13, 2013-14 and 2015-16 in respect of Bibhuti Bhusan Sahoo, P. Partha Sarathi and Ajit Kumar Rout, respectively. It is a fact that as per Exts. 43 to 45, the above named disputants were categorized as 'workmen' though the management has brought them under the LMS category. It is a fact that the LMS category staff cannot perform the role and responsibility of the HO category staff. I cannot say, without referring to the records, if the disputants have no authority for independent correspondence with the outside companies in connection with the affairs of the first party. I have never seen any document disclosing independent correspondence between the disputants as representative of the first party and outside companies. It is not a fact that the disputants as representative of the first party have never visited other companies independently concerning with the affairs of the first party. It is a fact that no document is filed to that effect, but if required the management will file documents concerning thereto. It is

not a fact that the disputants have no power to approve bills, expenses and vouchers for the subordinate staffs. I have seen those documents and can produce as and when required by this Tribunal. It is not a fact that there is no such documents exists and deliberately I am stating falsely. It is not a fact that I cannot show any document regarding the control and power of the disputants over the recruitment and promotion of staffs. (The witness volunteers, he would submit the relevant documents if required by this Tribunal).

Similarly, MW No. 2 on being cross examined by the second party with the issue in hand has deposed as follows :—

Presently around 30 staff are working in the Accounts Department as stated in Para. 3 of my evidence affidavit. I have no direct knowledge about the staff strength of the Accounts Department and the category of employees at the relevant point of time when dispute arose between the parties, but the nature of work of the Accounts Department has been the same as before. I have also no idea as to what was the service condition of employees of the Accounts Department at the relevant point of time and I cannot say if they were governed by the Certified Standing Orders or Service Rules of the Company. I have no idea as to what was the service condition of the LMS employees during the relevant period, i.e. 2010. I have not seen any appointment letter of LMS employees of the year 2010. It is a fact that the LMS employees were not vested with the powers such as sanction of leave, recommending promotion, performance appraisal and disciplinary action etc..

MW 3 also stated in his cross-examination as follows :—

It is a fact that I have not gone through the claim statement and the documents filed by the second party before this Tribunal. I cannot say if the disciplinary action against two LMS employees, namely Yakub Badra and R.K. Tiwari have been taken based upon the Certified Standing Orders of the first party. It is a fact that the Chargeman in the Pot Room Section of the Smelter Plant of the first party management are covered under the Long-Term Settlement. It is not a fact that the job responsibility of the Chargeman is to do job planning. All the employees including the Chargeman, LMS and HO Roll follow the SOP. It is a fact that the Chargeman and LMS retire at the age of 58 and the HO Roll employees retire at 60 years of age. It is not a fact that the averment with regard to the nature of duties of the LMS in the Pot Room are primarily administrative and managerial functions are baseless for want of supportive documents. It is not a fact that the LMS employees in the Pot Room have no independent decision making authority and that they are performing manual, clerical and technical nature of job. The SOP has been prepared by the LMS and HO Roll staff jointly, but no document is filed in support of that fact in this Tribunal. It is not a fact that I cannot file document to establish the above statement. It is not a fact that no document is filed to that effect as because there is no such document exists. It is not a fact that the LMS do not sanction the leave but only forward the leave applications, It is not a fact that I cannot file the document to establish that after being initialled by the LMS an employee's leave application is sanctioned and availed the leave without any pay deduction. It is a fact that Privilege Leave encashment is done by the HO Roll officials after the application is forwarded by the LMS.

The second party-union, on the other hand, asserting that the disputants involved herein are all discharging manual/clerical nature of duties adduced evidence in that regard through WW 1, WW 2 and WW 3. WW 1 in his examination-in-chief has stated that all the 413 members of the union do the job of manual and/or clerical in nature and during cross-examination at

Para. 37, he narrated the nature of job performed by him under the management. Though WW 1 has been cross-examined at length, yet the first party failed to elicit anything regarding the supervisory nature of jobs performed by the LMS.

Likewise, WW No. 2 in his evidence-in-chief has stated that he never supervises any subordinate employee's job nor anybody reports him for duty. Neither he sanctions any subordinate employee's leave nor calls for any explanation from any subordinate employee in case of any dereliction of duty. He stated that he never performs any administrative/managerial job. It is in his evidence that all the subordinate employees including him being in the lower hierarchy report to the Section Head Mr. Bigyan Patnaik, Manager, who exercises all supervisory as well as managerial power over his work and he in the department works under the supervision and guidance of said Bigyan Pattnaik. WW 2 further stated that all the Junior Assistants, Assistants and Senior Assistants working in Grade 25 to 30 in the Captive as well as Smelter Plant of the first party are performing the same jobs which he is/was performing as a Clerk-cum-Typist and all the said jobs are of manual as well as clerical in nature. Despite cross-examination by the first party, nothing elicited from him as to the supervisory nature of job entrusted by the first party consequent upon his up gradation to the LMS category.

WW No. 3 in Para. 4 of his evidence in chief has stated - "I never supervise any subordinate employee's job nor anybody reports for duty to me. Neither I sanction any subordinate employee's leave nor calls for any explanation from any subordinate employee, in case of any dereliction in his duty. Me as well as my subordinate employees in the lower hierarchy report to our Section Head Mr. Nand Lal, Assistant Manager-Stores, who reports to the Department Head Mr. Girish Abbott, GM-Materials, who exercises all supervisory as well as managerial power over our work so also the work of Mr. Nand Lal. All of us in our Department work under the supervision and guidance of Mr. Nand Lal. His evidence from Para. 9 to 46 is the narration about the nature of job of all the staff members forming part of Grade 25 to 30 in various departments/sections of Captive and Power Plant of management wherein he pointed out that the disputants attached to such departments/sections do most clerical and manual nature of jobs. Being cross-examined, he also indicated further as to his nature of duties. It is stated by him at Para. 61 —"It is a fact that in the Stores Complex some contract labourers are being engaged. The works assigned to me includes unboxing, labelling, tagging of the bins. It is not a fact that I decide regarding tagging of the bins on the materials. The witness volunteers that prior to receipt by me of the materials the bins have already been codified. At the time of receipt of the box containing materials I receive a hard copy of the list of the materials contained in the box(invoice) and thereafter I prepare a material arrival report. Thereafter I physically verify the contents of the box by examining the material arrival report along with the Receiving Section Operatives. It is a fact that the Operatives are also provided with computers. It is a fact that after receipt of the invoice I physically go to the Receiving Section and there I identify the box relating to the invoice with the help of the Operatives. It is a fact that after the box is opened I tally the contents of the box with the invoice. It is a fact that the Operatives help me in counting the number of the materials received. It is a fact that thereafter I prepare the Material Receipt Report. The witness volunteers that prior to preparation of Material Receipt Report by me, the Users Deptt. verifies the technicalities of the materials. It is not a fact that the receipt of materials and preparation of MRR is not a daily routine job. It is not a fact that my job of physical verification of received materials takes approximately 15-20 minutes. It is a fact that the other LMS staff of my Section do similar type of job relating to their respective assignments. His evidence from Para. 82

to 104, WW 3 is a complete narration about the nature of job performed by the LMS employees at various sections/departments. As against the evidence in chief, the first party referred to Para. 51 to 57, 59, 63, 65 to 68, 71 to 89, 91, 93 to 96, 98 and 101 to 104 of the cross-examination part of WW 3, but failed to elicit anything from WW No. 3 to demolish his statement in examination-in-chief with regard to the supervisory nature of duties performed by the LMS category.

13. On a careful examination of the evidence, as discussed above, the Tribunal finds it difficult to hold that by virtue of upgradation of the members of the second party to the LMS category they were/are discharging any supervisory nature of duties, so as to oust them from the definition of 'workmen'. Besides, there is no documentary evidence available on record wherefrom an inference can be drawn that consequent upon upgradation of the members of the second party to LMS category, they were/are required to perform any supervisory nature of jobs. On the available materials, therefore, the Tribunal is of the view that the first party has failed to establish that the members of the second party after their upgradation to LMS category during the year 1997-98 were discharging supervisory nature of duties. Accordingly, the argument advanced by first party that the members of the second party are not workmen is not acceptable.

The issue is answered accordingly.

14. *Issue No. (ii)*—The learned Senior Counsel representing the first party highlighting the points raised on the maintainability of the reference in the written statement insisted that the disputants having accepted/acknowledged the benefits of Management Staff Category for a period of more than a decade without there being any protest before the erstwhile management of INDAL or any other forum, the demand raised by the second party before the present management claiming status of 'workmen' for its members and considering their service weightage they be given increments, as in the schedule of reference, is nothing but an attempt to disturb the entire equilibrium in the industry of the first party; even though by elapse of time a lot of Wage Roll/Salary Roll employees have been promoted to LMS category and several LMS employees have been promoted to HO Roll Category. According to the learned Counsel, on this ground alone the reference can be said to be not maintainable. Attributing the conduct of the second party members to be fence sitters, it is contended by the learned Senior Counsel that the second party should not be allowed to barge into Courts and cry for their rights at their convenience and in support of thereof has cited the verdict of the Hon'ble Supreme Court in the case of U.P. Power Corporation Ltd. and others Vs. Ram Gopal [(2021) 13 SCC 225].

15. *Per contra*, the learned Counsel representing the second party contended with reference to the argument advanced on behalf of the first party that the second party members having accepted/acknowledged the privileges of Management Staff Category for a substantial period they are now estopped to raise their voice before the present management and on that ground alone reference is not maintainable, it is submitted on behalf of the second party that in absence of evidence to the effect that while bringing the members of the second party to the Management Staff Category they were not given any opportunity to exercise their option, rather they were compelled/coerced to give undertakings for the purpose and with a fear to lose their employment they had furnished such undertakings, the plea advanced by the first party is not to be given much importance, as the same amounts to an unfair labour practice on the part of the first party. Further it is submitted by the learned Counsel for the second party that it being the settled principle of law that there is no estoppel against the exercise of fundamental rights guaranteed under the constitution,

the arguments laid in the matter of delay in raising the dispute by the second party union is not a ground to negative the claim of the second party union.

16. The rival submissions on the point, in my view, require a threadbare consideration of the evidence/materials available on record before proceeding to examine the merit of the claim.

It transpires from the evidence of WW 1 when he deposed during his cross-examination at Para. 24 that "Ext. A is the xerox copy of correspondence from one A.K. Kar, the then Plant Head, issued in my favour. This is my signature which is marked as Ext. A/1. Volunteers - I was forced to put my signature thereon. I cannot say if any other staff who were holding higher post than me have opted to be included in management category staff in the year 1997. We have never moved the management in writing including me and others to the management category staff."

Similarly, it is found from the evidence of WW No. 2 when he deposed in his cross-examination at Para. 20 and 21 that it is a fact that on the 28th April 1998 my category was changed from workmen category to management, staff category M-12 vide Ext. L. Prior to that I was a member of Indal Employees Union, HiraKud Power. The said Union still exists at HiraKud Power Plant. It is a fact that besides the Employees' Union another Workers Union is in existence in the name and style as "Indal HiraKud Power Workers' Union. I do not know if any dispute was raised by Indal Employees Union in between the period 1998 to 2010. It is a fact that in between that period I personally raised my grievance orally before the then HR Manager of the management in the year 1998. Though the HR Management gave assurance to take action on my grievance, no action was taken by the management. It is not a fact that at no point of time in between the period 1998 to 2010, I have never raised my grievance before any of the Authorities or the HR Manager of the management. I have not initiated any proceeding in any Forum against the inaction of the management. It is a fact that in between 2005 to 2010 after the Indal was taken over by Hindalco, no dispute relating to Ext. L was raised before the management or any labour machinery.

Coming to the evidence of WW No. 3, it is found from his evidence when he deposed during his cross-examination at Para. 52 that it is a fact that the long term tripartite settlements were binding on the workmen category of employees only and not the officers and management staff. On being confronted one document, the witness admitted the same to have been supplied to him during reorganisation of the category of employees. The same is marked here as Ext. AB. It is a fact that vide Ext. AB I was placed in Management Staff Category in Grade M-12. It is a fact that Ext. AB contains a clause that I will no longer be governed by the Union-Management Agreements. It is a fact that I put my signature on Ext. AB on the 26th August 1997 towards my acceptance and affirmation. The witness volunteers that I was compelled to sign on Ext. AB and that was given the impression that the terms and conditions of my service will not be changed thereby. It is a fact that at that time I had never lodged any complaint in writing before any Authority regarding the said compulsion by the management. The witness volunteers that I did not give anything in writing before any Authority out of fear of harassment. It is a fact that in the year 1997 the management was of INDAL.

17. On a bare perusal of the evidence, as discussed above coupled with documentary evidence Ext. A, Ext. AB and Ext. L, as indicated by the witnesses in their respective statement go to show that with the introduction of the cadre i.e. Management Staff Category by the erstwhile INDAL during the year 1997-98, the members of the disputant union were inducted into the cadre and accordingly they endorsed their acknowledgement to the effect that they will no longer be governed by the Union-Management Agreements.

It further reveals from the evidence that from 1998 till 2005 when the first party took over the management of M/s INDAL, neither any individual dispute or dispute through union, in writing, was raised by the disputants, who are being presently represented through the second party. Even on scrutiny, not a single document is found available on record to presume that either individually or collectively the members of the second party had protested the action of the first party when it introduced a new cadre (Management Staff Category) and asked them to come over to such new cadre either before the erstwhile management of INDAL or any other Competent Authority. Rather, they remained silent over the matter for more than a decade and only after formation of the Hindalco Staff Association they came up with a plea before the first party (HINDALCO) alleging that their categorisation by the erstwhile management was less beneficial comparing to their coverage under the LTS. The ground raised in this regard by the second party that they were all compelled/coerced by the erstwhile management of INDAL to accept and acknowledge the categorisation made by it and with a fear to lose their employment they had endorsed their signature on Exts. A, AB and L, in absence of any protest/representation to any competent authority, therefore loses its significance and thus not acceptable to the Tribunal. Rather, the conduct of the second party creates a shadow over their belated claim. As it seems, the members of the second party enjoyed the benefits available under the Management Staff Category for a substantial period of twelve years and only after formation of Hindalco Staff Association, they agitated the issue before the first party urging that the privileges of Management Staff Category was less beneficial than the benefits available under the LTS. This effort on the part of the second party-union, in my view, shows their mind set for reverting back to the former position i.e. for their coverage under the LTS, meant for the 'workmen' category, and that too such a step was taken after enjoying the benefits meant for Management Staff Category for more than a decade. It may be taken note of that the first party took over the man force from M/s INDAL on "as is where is" basis. In view of the above, I find sufficient force behind the submission of the learned Senior Counsel that in the present situation when the members of the second party have been taking up responsibilities with better benefits and moreover there was never any resentment from their side till 2010, any finding pursuant to the claim of the second party union shall lead to disturb the entire equilibrium in the industry and therefore, I am in complete agreement with the learned Senior Counsel that fence sitters like the second party members should not be allowed to barge into Courts and cry for their rights at their convenience seeking reliefs.

18. In view of the conclusions arrived at in the preceding paragraph on the maintainability of the reference to the effect that the second party have never raised any resentment over their upgradation to the Management Staff Category from 1998 till 2010 and for that matter not only they had endorsed their acceptance/acknowledgement to come over to the Management Staff Category but also enjoyed benefits thereof for more than a decade, despite there being a finding that there remains no distinction/difference of nature of work between the persons covered under the LTS and the Management Staff Category. The Tribunal is constrained to record a finding that any conclusion on Issue No. (ii) at this juncture shall lead to disturb the entire equilibrium in the industry; the reason being that there is evidence on record that most of the members of the second party-union have in the meantime been promoted to hold posts under H.O. Roll of the first party.

19. Before parting with the Award, I may observe here that in the instant dispute the second party-union has not only laid much emphasis touching the service conditions of the members of the second party i.e. alleging violation of the provisions of Section 9-A of the Act on the part of the first party, but also adduced much evidence on that aspect. But, in view of the specific schedule,

referred for adjudication by this Tribunal and on the face of the findings arrived at on maintainability of the proceeding, the Tribunal is not inclined to address the merit or otherwise of such grounds advanced by the second party; particularly when it has been asserted by the second party-union that relating to such grievance another dispute is pending conciliation before the appropriate Authority.

20. In view of the above, the reference is answered in the negative as against the second party-union.

Dictated and corrected by me.

BENUDHAR PATRA

30-12-2024

Presiding Officer

Industrial Tribunal, Bhubaneswar

BENUDHAR PATRA

30-12-2024

Presiding Officer

Industrial Tribunal, Bhubaneswar

[No. 795—LESI-IR-ID-0002/2025-LESI.]

By order of the Governor

MADHUMITA NAYAK

Additional Secretary to Government